

RECEIPT # 56105  
AMOUNT \$ 150.00  
SUMMONS ISSUED 3  
LOCAL RULE 4.1         
WAIVER FORM         
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BY DPTY. CLK.         
DATE 4-9-04

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Daniel L. Simon, )  
)  
Complainant, )  
)  
vs. )  
)  
Choice Hotels International, Inc., )  
New England Resort Management, )  
LLC d/b/a Clarion Nantasket )  
Beach Hotel, )  
Ferdinand J. Kiley, )  
)  
Respondents. )

CIVIL ACTION NO.

**04-10716 RWZ**

MAGISTRATE JUDGE Alexander

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Jurisdiction

1. Jurisdiction of Count I is conferred by 28 U.S.C. 1331, as this Count arises under the laws of the United States.
2. Jurisdiction of Counts II - III is conferred by pendent and/or supplemental jurisdiction pursuant to 28 U.S.C. 1367.

Parties

3. The Plaintiff, Daniel L. Simon ("Simon"), is a citizen of the Commonwealth of Massachusetts, Plymouth County.
4. The Defendant, Choice Hotels International, Inc. ("Choice Hotels"), is a for-profit Delaware corporation, with a principal place of business in Silver Spring, Maryland.
5. The Defendant, New England Resort Management, LLC d/b/a Clarion Nantasket Beach Hotel ("NERM") is a domestic limited liability company with a principal place of

business in Hull, Massachusetts.

6. The Defendant, Ferdinand J. Kiley ("Kiley") is a citizen of the Commonwealth of Massachusetts.

Factual Allegations

7. Simon is Caucasian and his country of national origin is the United States.
8. In or around April/May, 2002, Simon commenced employment with Defendants as a maintenance engineer at the Clarion Nantasket Beach Hotel in Hull, Massachusetts ("the Hotel").
9. The hotel is owned and operated by Defendant, NERM.
10. Defendant, Kiley, is the owner/operator of NERM.
11. Defendant, Choice Hotels, owns the Clarion Hotel brand, has granted a franchise for the Hotel to NERM and Kiley.
12. At all times during Simon's employment at the Hotel, Choice Hotels held itself out to the public as his employer through the display of the Clarion Logo; by its control and supervision over NERM and Kiley in the operation of the Hotel; by requiring NERM and Kiley to adhere to Choice Hotels policies and procedures in the operation of the Hotel; and by otherwise exercising significant control over the operations of the Hotel.
13. At all times during Simon's employment at the Hotel, NERM and Kiley were the actual and/or apparent agents of Choice Hotels, acting within the scope of their actual and/or apparent agency.
14. Throughout his employment at the Hotel, Simon consistently met or exceeded the

reasonable performance expectations for his position.

15. Simon received numerous commendations from Hotel guests and residents.
16. During Simon's employment at the Hotel, Kiley and NERM terminated numerous Caucasian employees and replaced them with Columbian nationals and/or individuals of Columbian national origin.
17. Ruby Kiley, a senior manager and Kiley's wife, who is of Columbian national origin, made numerous disparaging remarks concerning Caucasian American employees, stating, for example, "you Americans work slow, we Columbians work hard," and "Americans work like dogs."
18. On or about, October 15, 2003, Kiley terminated Simon's employment, and replaced him with a individual of Columbian national origin, R. Martinez. When Simon asked Kiley why he was being terminated, Kiley responded that it was because he was not Columbian, and that he (Kiley) wanted only Columbians working in the maintenance department.
19. Kiley later claimed that Simon was terminated because work was slow.
20. This stated reason for Simon's termination, that work was slow, was false and a pretext for unlawful discrimination. In fact, work was not slow as evidenced by the fact, among others, that Simon was immediately replaced upon his termination.
21. The above acts and omissions of all Defendants have directly and proximately caused Simon to suffer lost income and diminished earning capacity, personal injury including emotional distress, and have otherwise damaged him.

COUNT I

Title VII Of the 1964 Federal Civil Rights Act, as Amended  
42 U.S.C. 2000e, et seq.

Simon v. Choice Hotels and NERM

22. The Plaintiff adopts by reference all above allegations, and further alleges:
23. All conditions precedent regarding this Count have been complied with.
24. The above described acts of discrimination against Simon on the basis of race, color and national origin had the purpose or effect of injuring Simon in the terms and conditions of his employment.
25. The above described acts of discrimination had the purpose or effect of unreasonably interfering with Simon's work performance or creating an intimidating, hostile, or offensive working environment.
26. All Defendants' stated conduct was willful, malicious, in bad faith, outrageous, and extraordinary, thereby giving rise to an award of punitive damages.

WHEREFORE, the Plaintiff, Daniel L. Simon, demands judgment against Choice Hotels and NERM in an amount reasonably calculated to adequately compensate him for his injuries, together with punitive damages, interest, reasonable attorney's fees, and the costs of this action.

COUNT II

Mass.G.L. c. 151B

Simon v. All Defendants

27. The Plaintiff adopts by reference all above allegations, and further alleges:
28. All conditions precedent regarding this Count have been complied with.

29. The above described acts of discrimination against Simon on the basis of race, color and national origin had the purpose or effect of injuring Simon in the terms and conditions of his employment.
30. The above described acts of discrimination had the purpose or effect of unreasonably interfering with Simon's work performance or creating an intimidating, hostile, or offensive working environment.
31. Kiley additionally aided, abetted, incited, compelled and/or coerced the doing of any of the acts forbidden under M.G.L. c. 151B and/or attempted to do so.
32. All Defendants' above stated conduct was willful, malicious, in bad faith, outrageous, and extraordinary, thereby giving rise to an award of punitive damages.

WHEREFORE, the Plaintiff, Daniel L. Simon, demands judgment against all Defendants in an amount reasonably calculated to adequately compensate him for his injuries, together with punitive damages, interest, reasonable attorney's fees, and the costs of this action.

COUNT III  
Intentional Interference with a Contract  
Simon v. Kiley

33. Plaintiff adopts by reference all allegations herein, and further alleges:
34. Through his above stated actions, Kiley knowingly and intentionally induced the remaining Defendants to break or alter their at-will employment contract with Simon, and a breaking or altering of said contract in fact occurred, causing Simon to lose contractual

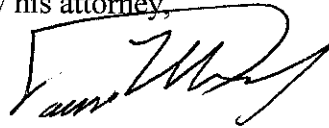
rights, including his employment.

35. The above said acts of Kiley were wrongful or improper in their ways and/or means because said acts were made without any rational basis, in bad faith, with malice, with a race, color and national origin based discriminatory animus, and were otherwise improper.

WHEREFORE, the Plaintiff, Daniel L. Simon, demands judgment against Kiley in an amount reasonably calculated to adequately compensate him for his injuries, together with interest and the costs of this action.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS**

Respectfully submitted,  
Daniel L. Simon  
By his attorney,



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Paul F. Wood, BBO No. 565195  
Law Office of Paul F. Wood, P.C.  
45 Bowdoin Street  
Boston, MA 02114  
(617) 532-2666

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Daniel L. Simon V.  
Choice Hotels International, Inc.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.

\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases

☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐ V. 150, 152, 153.

04-10716 RWZ

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403) YES ☐ NO ☒  
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? YES ☐ NO ☐
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? YES ☐ NO ☒
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES ☐ NO ☒  
OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES ☐ NO ☒
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES ☐ NO ☒  
(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? \_\_\_\_\_
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Boston Section
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION; YES ☐ NO ☐ OR WESTERN SECTION; YES ☐ NO ☐

(PLEASE TYPE OR PRINT) Paul F. Wood  
ATTORNEY'S NAME Law Office of Paul F. Wood P.C.

ADDRESS 45 Bowdoin Street

TELEPHONE NO. Boston, Massachusetts 02114

(Categrm.rev - 3/97)

617-532-2666

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

DANIEL L. SIMON

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

Choice Hotels, International, Inc.,  
New England Resort Management LLC,  
Albia Clason Nantasket Beach Hotel,  
Ferdinand J. Kiley

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Paul F. Wood  
Law Office of Paul F. Wood, P.C.  
45 Bowdoin St.  
Boston, MA 02114 (617) 532-2666

## ATTORNEYS (IF KNOWN)

04-10716 RWZ

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 USC 2000e, et seq. discrimination in employment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/9/04

*[Signature]*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_